

Message Text

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ACTION EA-09

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CINCPAC IMMEDIATE

CINCPACAF IMMEDIATE

CINCPACFLT IMMEDIATE

CINCPACREPPHIL SUBIC IMMEDIATE

CG 13TH AF CLARK IMMEDIATE

C O N F I D E N T I A L SECTION 1 OF 3 MANILA 11569

CINCPAC ALSO FOR POLAD

FROM USDEL 177

E.O. 11652: GDS

TAGS: MARR, RP

SUBJECT: PHILIPPINE BASE NEGOTIATIONS: ACCESS AND MOVEMENT
(ARTICLE VI)

1. SUMMARY: US ARTICLES IX AND XII, SUB-PARAS 2B, 2E, 2F, MOST OF SUB-PARA 2H AND PARA 3 OF US ARTICLE VII, PHIL ARTICLE VI, AND PHIL ANNEX C AND D HAVE BEEN COMBINED INTO A SINGLE ARTICLE (TEXT PROVIDED SEPTTEL). REQUEST WASHINGTON CONCURRENCE/ COMMENTS. END SUMMARY.

2. COMMAND AND CONTROL WORKING GROUP, HEADED BY GENERAL ESPINO AND RADM SHELTON HAS BEEN DISCUSSING THE SUBJECT OF ACCESS AND MOVEMENT OF SHIPS AND AIRCRAFT SINCE 9 JULY. DRAWING ON IMPRESSIONS PHIL SIDE RECEIVED FROM TOURS OF CLARK AND SUBIC AND ON
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EXCELLENT BACKGROUND INFORMATION PROVIDED BY COMUSNAVPHIL AND

CG 13TH AF, US SIDE HAS CONTINUED TO TRY TO GIVE PHILS PROPER PERSPECTIVE ON COMPLEXITY AND TEMPO OF US OPERATIONS (INCLUDING SURGE REQUIREMENTS) AT THE TWO MAJOR BASES. WE ALSO HAVE REFERRED OFTEN TO AD REFERENDUM AGREEMENT ON ARTICLE III, PARA 3, RE "ASSURANCE OF UNHAMPERED UNITED STATES MILITARY OPERATIONS" (USDEL 132).

3. PHIL SIDE OF WORKING GROUP, PARTICULARLY GENERAL ESPINO, GRADUALLY HAS COME TO UNDERSTAND OUR NEEDS AND HAS EXHIBITED INCREASED FLEXIBILITY DESPITE OBVIOUS PRODDING BY OTHER MEMBERS OF THE PHIL PANEL TO RESIST OUR EFFORTS. BEGINNING 12 JULY, WORKING GROUP HAS BEEN CONSIDERING INFORMAL, NON-BINDING WORKING PAPERS AND COMMENTS ON THE SUBJECT. MAJOR STUMBLING BLOCK HAS BEEN PHIL DESIRE TO INCLUDE LANGAUGE REFLECTING PHIL SOVEREIGNTY AND WHICH, THEY SAY, WOULD NOT HAMPER OUR OPERATIONS.

4. FOLLOWING IS RATIONALE FOR TEXT OF ARTICLE VI, PROVIDED SEPTEL, KEYED TO THE SPECIFIC PARAGRAPHS OF THE ARTICLE.

A. PARA 1. THIS PARAGRAPH GUARANTEES FREE ACCESS TO, EGRESS FROM AND MOVEMENT BETWEEN THE FACILITIES OF VESSELS, AIRCRAFT AND VEHICLES OF THE US ARMED FORCES. THERE IS NO LIMITATION ON SUCH, OTHER THAN THE PROVISION TO NOTIFY THE PHILIPPINE BASE COMMANDER (PBC) OF SUCH MOVEMENTS, INTENDED TO KEEP HIM SATISFACTORILY INFORMED. THIS PROVISION WOULD ALSO ENABLE THE PBC TO ENSURE THAT PHIL OFFICIALS, SUCH AS CUSTOMS AND IMMIGRATION CAN BE PRESENT TO PERFORM THEIR FUCTIONS. WE HAVE OMITTED STATEMENT THAT ADVANCE CLEARANCE WILL NOT BE REQUIRED WHICH WAS HARD FOR PHIL SIDE TO ACCEPT IN PRINT RPT IN PRINT, BUT HAVE INSURED THAT ONLY NOTIFICATION VICE CLEARANCE IS ALL THAT IS REQUIRED. WE HAVE ALSO OMITTED SPECIFIC REFERENCE TO "ARMOR", CONSIDERING THAT THE PRESENT LANGUAGE WHICH GUARANTEES ACCESS, EGRESS AND MOVEMENT OF ALL VEHICLES,WITHOUT QUALIFICATION, IS SUFFICIENT FOR THIS PURPOSE. PHIL BRACKETED LANGUAGE "WITHIN THE AGREED FORCE LEVELS" WAS RE-INSERTED BY PHILS (THEIR ORIGINAL ANNEXES C AND D) ON 28 JULY AND HAS BEEN DISCUSSED PRELIMINARILY. WE HAVE CONSISTENTLY REJECTED THE CONCEPT OF AGREED FORCE LEVELS. PHIL SIDE HAS INDICATED THAT THEY WILL BE VERY FORTHCOMING RE FORCE LEVELS AND WILL

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INCLUDE ALL OF THE SEVENTH FLEET AND PACAF UNITS AND ANY OTHER SIMILAR UNIT DESIGNATIONS WHICH WE CAN IDENTIFY AS A POTENTIAL USER OF THE FACILITIES (E.G. PACFLT UNITS OTHER THAN 7TH FLT). COMMAND AND CONTROL WORKING GROUP WILL BE DISCUSSING THIS MATTER MORE FULLY IN NEAR FUTURE WHEN WE TAKE UP PARAS 1 AND 2 OF PHIL ARTICLE X.

B. PARA 2. THE ORIGINAL US DRAFT AND SUBSEQUENT US WORKING PAPERS TREATED ACCESS TO THE FACILITIES OF MILITARY

AND COMMERCIAL VESSELS AND AIRCRAFT ALIKE AND IN THE SAME PARAGRAPH. HOWEVER, THE PHIL SIDE HAD GREAT DIFFICULTY WITH THIS APPROACH EVEN THOUGH THEY WERE UNABLE TO ARTICULATE THEIR OBJECTIONS CLEARLY. THE BASIC DIFFERENCE BETWEEN PARAS 1 AND 2 IS THAT THE AGREED PROCEDURES IN PARA 1 ARE SPECIFICALLY LIMITED TO NOTIFICATION OF MOVEMENTS WHEREAS PARA 2 CONTAINS NO SUCH LIMITING REFERENCE. WE ACCEPTED PARA 2 ON THE BASIS THAT "FREE ACCESS" IS GUARANTEED AND THAT THE PROCEDURES AGREED TO BETWEEN THE PBC AND USFC WILL BE LIMITED TO ONLY NOTIFICATION AND ARRANGEMENTS RELATING TO SUCH AS CUSTOMS AND IMMIGRATION. CHANGE IN TEXT OF ORIGINAL US DRAFT TO SUBSTITUTE "CHARTERED WHOLLY OR PARTIALLY BY OR ON BEHALF OF THE US ARMED FORCES" FOR "OPERATED EXCLUSIVELY FOR OR UNDER THE CONTROL OF THE US" WAS MADE TO ENSURE THAT SPACE CHARTER VESSELS, WHICH COMPRISE ROUGHLY 70 PERCENT OF LOGISTICS SHIPPING AT SUBIC, CAN CONTINUE TO HAVE FREE ACCESS TO SUBIC. GEN ESPINO WAS APPARENTLY UNDER PRESSURE FROM PHIL PANEL TO REQUIRE SPACE CHARTER VESSELS TO UTILIZE PHIL COMMERCIAL PORTS BUT HE HAS AGREED TO OUR LANGUAGE AD REFERENDUM AND HAS STATED THAT HE WILL DEFEND IT WITH HIS PANEL (WHICH HE APPARENTLY HAS SO FAR). THE PHIL SIDE HAS NOT RAISED THE

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FROM USDEL 177

SUBJECT OF ACCESS TO OR USE OF THE FACILITIES BY PHILIPPINE COMMERCIAL VESSELS. THUS WE HAVE NOT OFFERED WASHINGTON APPROVED LANGUAGE (STATE 175929) ON THIS MATTER NOR DO WE INTEND TO. PHIL BRACKETED LANGUAGE RE FORCE LEVELS IS DISCUSSED IN SUBPARA 4A ABOVE. THE SECOND SENTENCE OF THIS PARA WAS DRAFTED BY US TO ASSIST THE PHIL WORKING GROUP IN DEFENDING THE FIRST SENTENCE OF THE PARA WITH THEIR PANEL AND IS CONSIDERED TO BE A STATEMENT OF EXISTING PRACTICES. THE US AND RP BRACKETED LANGUAGE IN THE SECOND SENTENCE WILL FALL INTO PLACE ONCE THE DEFINITIONS ARE RESOLVED WITHIN THE LEGAL WORKING GROUP (THE INTERCHANGEABLE USE OF THE WORDS "US FORCES" AND "US ARMED FORCES" IN SEVERAL PLACES IN THIS ARTICLE IS ALSO CONTINGENT UPON THE RESOLUTIONS OF DEFINITIONS).

C. PARA 3. US FORMULATION OF THE PARA MUST BE READ
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IN CONCERT WITH PARAS 1 AND 2 OF THIS ARTICLE. WE HAVE ATTEMPTED TO GIVE THE PBC A SOVEREIGNTY ASSUAGING ROLE WHILE ENSURING THAT, IN FACT, HE CANNOT INTERFERE WITH OUR OPERATIONS. THIS THIS END, WE HAVE IN ESSENCE PROVIDED FOR A PHIL HARBOR ENTRANCE CONTROL POINT FUNCTION TO BE EXERCISED FROM THE US PORT CONTROL OFFICE WHERE WE CAN BETTER MONITOR THE PROCEEDINGS. WE HAVE REJECTED THE PHIL FORMULATION OF THIS PARA. WHERE THE FACILITIES WATER BOUNDARY LINE IS DRAWN OBVIOUSLY IS THE GUT ISSUE HERE. WE HAVE NOT RPT NOT GIVEN PHILS ANY INDICATION OF ACCEPTING ANY WATER AREAS LESS THAN WENOW HAVE. PHIL POSITION APPARENTLY BASED ON FOLLOWING:

(1) SATISY PHIL SOVEREIGNTY BY THE EXERCISE OF SOME FORM OF CONTROL OVER ALL ACCESS TO AND EGRESS FROM THE PHILIPPINES WHETHER BY LAND, SEA OR AIR -- IN THIS CASE BY SEA.

(2) SPECIFIC GUIDANCE FROM AMBASSADOR ROMUALDEZ AND PRESUMABLY HIGHER AUTHORITY) THAT US MUST VIVE UP ALL WATER AREAS AT SUBIC.

(3) PHIL NECESSITY TO PROVIDE ACCESS TO NORTHERN END OF SUBIC BAY FOR PLANNED KAWASAKI VENTURE AS WELL AS OTHER FUTURE COMMERCIAL VENTURES.

(4) DESIRE EXPRESSED IN DISCUSSIONS BY PHIL NAVY MEMBERS OF THIS WORKING GROUP TO PREVENT ENCROACHMENT BY THOSE FUTURE COMMERCIAL ACTIVITIES IN NORTHERN SUBIC BAY INTO THE NAVAL BASE SUBIC BAY COMPLEX.

(5) WILLINGNESS/DESIRE EXPRESSED IN DISCUSSIONS BY PHIL NAVY MEMBERS OF THIS WORKING GROUP TO INCLUDE LOS FRAILES, TABONES, NASASA-TABONES (INCLUDING WILD HORSE CREEK, ETC.) PLUS RPT PLUS PRESENT ZAMBALES TRAINING AREA WITHIN A PHIL NAVAL RESERVATION WITH CONTINUED ACCESS BY US AS AT PRESENT.

(6) THERE HAVE BEEN SUBTLE INDICATIONS THAT DESPITE (1) AND (2) ABOVE, THE PHILS MIGHT SERIOUSLY CONSIDER A WATER BOUNDARY LINE WHICH WOULD PLACE SOME MEASURE OF WATER AREAS WITHIN THE FACILITIES, BUT WHICH WOULD GIVE PHILS HARBOR ENTRANCE PLUS CONTROL OF ACCESS TO OTHER PARTS OF SUBIC BAY (IN PARTICULAR THE NORTHERN END). ADDITIONALLY, THE PRESENT AMPHIBIOUS AND OTHER OUTER BAY ANCHORAGES WOULD BE UNDER THEIR CONTROL BUT WOULD CONTINUE TO BE AVAILABLE FOR US USE WHILE ALSO ACCOMMODATING REQUIREMENTS
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ASSOCIATED WITH KAWASAKI AND OTHER COMMERCIAL VENTURES PRESUMABLY TO BE CENTERED IN THE SUBIC CITY AREA.

D. PARA 4. PHIL ACCEPTANCE OF THE FIRST SENTENCE OF THIS PARA WAS EXTREMELY DIFFICULT TO ATTAIN. WE HAVE REDRAFTED SUBPARA 2F OF ARTICLE VII OF ORIGINAL US DRAFT IN A MANNER WHICH WE BELIEVE ACCOMPLISHES THE SAME OBJECTIVE BUT WHICH SATISFIES PHIL "SOVEREIGNTY" NEEDS. OUR EARLIER WORKING PAPER LANGUAGE RE LOCAL PROCEDURES AT CLARK AND CUBI STATED "...FOR THE PURPOSE OF US CONTROLLERS DIRECTING US AIRCRAFT AND PHIL CONTROLLERS DIRECTING PHIL AIRCRAFT". WE HAVE AGREED TO THE DELETION OF THAT PROVISION AT THE REQUEST OF THE PHIL SIDE BASED ON THE FIRST SENTENCE OF THIS PARAGRAPH AND ON THE PREMISE THAT THE LOCAL PROCEDURES ESTABLISHED IN ACCORDANCE WITH THE THIRD SENTENCE OF THIS PARAGRAPH WILL KEEP CONTROL OF THE DEGREE OF JOINT MANNING IN THE HANDS OF THE USFC. THE MANDATORY LANGUAGE RE CLARK IS PREMISED UPON TENTATIVE ACCEPTANCE OF PHIL DESIRE TO STATION AN AIR UNIT AT CLARK (WHICH APPEARS TO BE WORKABLE). THE PERMISSIVE LANGUAGE RE CUBI IS BASED UPON OUR FREQUENTLY STATED DISTINCTION BETWEEN THE NATURE OF AIR OPERATIONS AT CUBI AND CLARK WHICH PRECLUDE THE STATIONING OF A PHIL AIR UNIT AT CUBI. WE AGREED TO THE PERMISSIVE LANGUAGE RE CUBI TO ALLOW FOR LATITUDE IN NAVY TO NAVY PROGRAMS, INCLUDING FUTURE TRAINING OF PHIL AIR CONTROLLERS THERE IF SUCH SHOULD BE DEEMED APPROPRIATE BY THE US. NOT THAT THE LANGUAGE RE BOTH CLARK AND CUBI PROVIDES ONLY FOR CONSULTATION WITH AND NOT RPT NOT THE AGREEMENT OF THE PBC.

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E. PARA 5. PHILS INITIALLY INSISTED ON THEIR APPROVAL OF FLIGHT PLANS BUT HAVE FALLEN OFF THIS POSITION AND WE BELIEVE PRESENT FORMULATION PRESENTS NO PROBLEM TO US.

F. PARA 6. WE HAVE CHANGED ORIGINAL US DRAFT TO OMIT REQUIREMENT FOR DIPLOMATIC CLEARANCES FOR USS AND USNS VESSELS. THE "AGREED FORCE LEVELS" ISSUE ARISES HERE AS IN PARAS 1 AND 2.

G. PARA 7. AT REQUEST OF GENERAL ESPINO WE HAVE SPELLED OUT PRESENT SATISFACTORY PROCEDURE IN LIEU OF "AGREED PROCEDURES FOR NAVIGATION AND SAFETY PRUPOSES." WE ARE AWARE THAT US POLICY (STATE 187103) IS NOT TO ENTER INTO BILATERAL AGREEMENTS ON NPW VESSELS BUT CONSIDER THAT THE INCLUSION OF NOTIFICATION PROCEDURE IS NOT INCONSISTENT WITH THIS POLICY AND DOES BENEFIT US.

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H. PARA 8. THE LANGUAGE HERE IS A SLIGHT DEVIATION FROM ORIGINAL US DRAFT AND, IN OUR OPINION, IS AN IMPROVEMENT THEREON.

I. PARA 9. WE CONSIDER THIS LANGUAGE, WHICH ORIGINALLY APPEARED IN PHIL ANNEX D RELATING ONLY TO VESSELS, AS A STATEMENT OF CUSTOMARY INTERNATIONAL LAW. WE BELIEVE THE INCLUSION OF SUCH LANGUAGE IN THE AGREEMENT, WHILE PROBABLY NOT NECESSARY, IS USEFUL AND SHOULD PREVENT INCIDENTS SUCH AS THE MEAT LOCKER PROBLEM WHICH OCCURRED IN NEW ZEALAND EARLIER THIS YEAR.

J. PARA 10. AN EARLY PHIL REDRAFT OF ARTICLE VI INCLUDED LANGUAGE WHICH REQUIRED PHILIPPINE APPROVAL FOR USE OF PHIL AIRSPACE OR THE FACILITIES BY AIRCRAFT WITH THIRD COUNTRY CREW MEMBERS. OUR REDRAFT DELETED REQUIREMENT FOR APPROVAL OF OVERFLIGHT AND CREATED AN EXCEPTION IN THE CASE OF THIRD COUNTRY CREW MEMBERS WHO ARE MEMBERS OF THE US ARMED FORCES. PHILS OBVIOUSLY WERE INSPIRED BY SPANISH AGREEMENT ON THIS MATTER. WE HAVE TENTATIVELY ACCEPTED THE PRESENT LANGUAGE IN DEFERENCE TO PHIL SOVEREIGNTY REQUIREMENTS AND IN THE BELIEF THAT IT IS OF NO HARM TO US.

I. PARA 11. THIS PARA WAS OBVIOUSLY ALSO INSPIRED BY SPANISH AGREEMENT. WE BELIEVE OUR REDRAFT MEETS OBJECTIONS RAISED IN STATE 179509 AND ON BALANCE WILL BE HELPFUL TO US.

L. PARA 12. WE HAVE REDRAFTED PHIL PROPOSAL TO LIMIT APPLICABILITY TO PORTS NOT IN THE VICINITY OF THE FACILITIES, AND TO DELETE REQUIREMENT FOR COMBINED SHORE PATROL.

M. PARA 13. THIS PARA INCORPORATES SUBPARAS 2B, 2H AND PARA 3 OF US ARTICLE VII IN SO FAR AS RELATING TO ACCESS AND MOVEMENT. IT ALSO INCORPORATES A SLIGHTLY MODIFIED VERSION OF WASHINGTON APPROVED LANGUAGE PROVIDED BY STATE 175929.

N. PARA 14. THIS PARA IS A REDRAFT OF US ARTICLE XII AND PARA 5 OF PHIL ANNEX D. THE SEVEN DAYS NOTICE IN THE FIRST SENTENCE WAS INSERTED BY THE PHIL SIDE TO PROVIDE SUFFICIENT TIME TO DEVELOP THEIR OWN REQUIREMENTS SO THAT THEY CAN SUBMIT A REQUEST TO US. WE HAVE ACCEPTED THIS SINCE THERE IS NO COMMITMENT ON OUR PART TO FULFILL THEIR REQUIREMENTS. THE RP BRACKETED LANGUAGE WAS FIRST INTRODUCED AT THE 3 AUGUST WORKING GROUP MEETING AND WAS REJECTED
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BY US ON THE BASIS THAT SUCH A COMMITMENT MIGHT BE INCONSISTENT WITH OUR PRACTICE/RESPONSIBILITY TO PROVIDE INFORMATION RE AIR AND MARINE NAVIGATION SAFETY AND MAPS AND CHARTS RELATING THERETO TO OTHER COUNTRIES. WE INDICATED HOWEVER, THAT WE WOULD SEEK WASHINGTON GUIDANCE ON

THIS MATTER.

O. PARA 15. THIS PARA IS BEING HANDLED BY THE PANEL CHAIRMEN. THE DISCUSSION WITHIN THE COMMAND AND CONTROL WORKING GROUP HAS BEEN LIMITED TO A FLAT REJECTION BY THE US SIDE.

5. ACTION REQUESTED: SUBMITTED FOR CAREFUL CONSIDERATION, COMMENTS, CONCURRENCE AND/OR GUIDANCE ASAP. SEPARATE/EARLIER COMMENTS AND GUIDANCE RE THE PHIL BRACKETED LANGUAGE IN PARA 14 IS NEEDED AND WOULD BE APPRECIATED.
SULLIVAN

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